

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TIMOTHY POWERS,

Plaintiff,

Docket No.: 19-cv-4738

-against-

VERIFIED ANSWER

ROMAN CATHOLIC DIOCESE OF ROCKVILLE
CENTRE, ST. MARTIN OF TOURS CHURCH
and ROBERT GUGLIEMONE,

Defendants.

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The defendant, ST. MARTIN OF TOURS CHURCH, by its attorneys, MULHOLLAND
MINION DAVEY MCNIFF & BEYRER, answering the Complaint of the plaintiffs, herein
allege upon information and belief as follows:

1. Denies any knowledge or information sufficient to form a belief as to the truth of
the allegations contained in the paragraphs of the Complaint designated "1", "5", "6", "9", "10",
"18", "19", "20" and "21".

2. Denies each and every allegation contained in the paragraphs of the Complaint
designated "2", "3", "4", "7", "13", "14", "15", "16", "17", "22", "23" and "24".

3. Denies each and every allegation contained in the paragraphs of the Complaint
designated "11" except admits that ST. MARTIN OF TOURS CHURCH was a not for profit
religious corporation incorporated in the State of New York.

AS TO THE FIRST CAUSE OF ACTION

4. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer

to each and every allegation contained in the paragraphs of the Complaint designated “1” through “24” inclusive, as alleged in the paragraph of the Complaint designated “25” with the same force and effect as if herein fully set forth at length.

5. Denies each and every allegation contained in the paragraphs of the Complaint designated “26”, “27”, “28”, “29”, “30”, “31” and “32”.

AS TO THE SECOND CAUSE OF ACTION

6. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer to each and every allegation contained in the paragraphs of the Complaint designated “1” through “32” inclusive, as alleged in the paragraph of the Complaint designated “33” with the same force and effect as if herein fully set forth at length.

7. Denies each and every allegation contained in the paragraphs of the Complaint designated “34”, “35”, “36”, “37”, “38”, “39” and “40”.

AS TO THE THIRD CAUSE OF ACTION

8. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer to each and every allegation contained in the paragraphs of the Complaint designated “1” through “40” inclusive, as alleged in the paragraph of the Complaint designated “41” with the same force and effect as if herein fully set forth at length.

9. Denies each and every allegation contained in the paragraphs of the Complaint designated “42”, “43”, “44”, “45”, “46”, “47”, “48” and “49”.

AS TO THE FOURTH CAUSE OF ACTION

10. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer

to each and every allegation contained in the paragraphs of the Complaint designated “1” through “49” inclusive, as alleged in the paragraph of the Complaint designated “50” with the same force and effect as if herein fully set forth at length.

11. Denies each and every allegation contained in the paragraphs of the Complaint designated “51”, “52”, “53”, “54”, “55”, “56”, “57” and “58”.

AS TO THE FIFTH CAUSE OF ACTION

12. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer to each and every allegation contained in the paragraphs of the Complaint designated “1” through “58” inclusive, as alleged in the paragraph of the Complaint designated “59” with the same force and effect as if herein fully set forth at length.

13. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the Complaint designated “60”, “61”, “62”, “63” and “64”.

14. Denies each and every allegation contained in the paragraphs of the Complaint designated “65”.

AS TO THE SIXTH CAUSE OF ACTION

15. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer to each and every allegation contained in the paragraphs of the Complaint designated “1” through “65” inclusive, as alleged in the paragraph of the Complaint designated “66” with the same force and effect as if herein fully set forth at length.

16. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the Complaint designated “67”, “68”, “69”, “70” and “71”.

17. Denies each and every allegation contained in the paragraphs of the Complaint designated “72”.

AS TO THE SEVENTH CAUSE OF ACTION

18. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer to each and every allegation contained in the paragraphs of the Complaint designated “1” through “72” inclusive, as alleged in the paragraph of the Complaint designated “73” with the same force and effect as if herein fully set forth at length.

19. Denies each and every allegation contained in the paragraphs of the Complaint designated “74”, “75”, “77”, “78” and “79”.

20. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the Complaint designated “76”.

AS TO THE EIGHTH CAUSE OF ACTION

21. Defendant, ST. MARTIN OF TOURS CHURCH, repeats and reiterates its answer to each and every allegation contained in the paragraphs of the Complaint designated “1” through “79” inclusive, as alleged in the paragraph of the Complaint designated “80” with the same force and effect as if herein fully set forth at length.

22. Denies each and every allegation contained in the paragraphs of the Complaint designated “81”, “82”, “83”, “84”, “85” and “86”.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

23. That the answering defendant, ST. MARTIN OF TOURS CHURCH, owed no duty to the plaintiff herein.

AS AND FOR A SECOND COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

24. That the defendant, ST. MARTIN OF TOURS CHURCH, had no notice of any
alleged assaultive or violent propensities on the part of ROBERT GUGLILMONE.

AS AND FOR A THIRD COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

25. That the alleged cause of action on behalf of the plaintiff stated in the Complaint
in the above action did not accrue within the time for the commencement of the action and is
therefore barred by the Statute of Limitations.

AS AND FOR A FOURTH COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

26. That the plaintiff's Complaint fails to state facts sufficient to constitute a cause of
action against this defendant, ST. MARTIN OF TOURS CHURCH.

AS AND FOR A FIFTH COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

27. Plaintiff has failed to mitigate damages in this matter.

AS AND FOR A SIXTH COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

28. Recovery, if any, by the plaintiff herein shall be governed by the provisions of
CPLR §4545.

AS AND FOR A SEVENTH COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

29. The answering defendant, ST. MARTIN OF TOURS CHURCH, herein denies liability; however, if a measure of damage of fifty percent or less is found against this answering defendant, then this answering defendant is entitled to the limitations of liability in CPLR Article 16.

AS AND FOR AN EIGHTH COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

30. That pursuant to General Obligations Law §15-108, the answering defendant, ST. MARTIN OF TOURS CHURCH, is entitled to a setoff for any settlement paid to the plaintiff by any and all parties or non-parties for the damages allegedly sustained, the amount of the setoff will be the amount paid or the value of the percentage of fault attributable to such paying parties or non-parties, whichever is higher.

AS AND FOR A NINTH COMPLETE AFFIRMATIVE
DEFENSE, THE ANSWERING DEFENDANT,
ST. MARTIN OF TOURS CHURCH, ALLEGES
UPON INFORMATION AND BELIEF AS FOLLOWS:

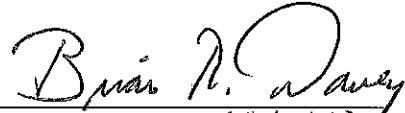
31. That plaintiff's cause of action is subject to laches.

WHEREFORE, defendant, ST. MARTIN OF TOURS CHURCH, demands judgment dismissing the plaintiff's Complaint, together with the costs and disbursements of this action.

Dated: Williston Park, New York
October 22, 2019

Yours, etc.,

MULHOLLAND MINION DAVEY
McNIFF & BEYRER

A handwritten signature in cursive script, reading "Brian R. Davey".

By: BRIAN R. DAVEY (8646)
Attorneys for Defendant
ST. MARTIN OF TOURS CHURCH
374 Hillside Avenue
Williston Park, New York 11596
(516) 248-1200

TO: MERSON LAW, PLLC
Attorneys for Plaintiff
150 East 58th Street, 34th Floor
New York, New York 10155
(212) 603-9100

JONES DAY
Attorneys for Defendant
ROMAN CATHOLIC DIOCESE OF
ROCKVILLE CENTRE
250 Vesey Street
New York, New York 10281
(212) 326-3939

BARKET EPSTEIN KEARON
ALDEA & LoTURCO, LLP
Attorneys for Defendant
ROBERT GUGLIEMONE
666 Old Country Road, 7th Floor
Garden City, New York 11530
(516) 331-5518

VERIFICATION

STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

BRIAN R DAVEY, ESQ., an attorney admitted to practice in the courts of New York State, states that I am an attorney in the law offices of MULHOLLAND MINION DAVEY McNIFF & BEYRER , attorneys for **defendant ST. MARTIN OF TOURS CHURCH** in the within action; I have read the foregoing **Answer** and know the content thereof; the same is true to my own knowledge, except as to matters therein alleged to be on information and belief, and as to those matters I believe it to be true.

The reason why this verification is signed by the affiant and not **defendant ST. MARTIN OF TOUR CHURCH** is because they are located outside of the county wherein affiant maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: investigation and documents contained in affiant's file.

Dated: Williston Park, New York
October 23, 2019


BRIAN R. DAVEY

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

THERESA McCAULEY, being duly sworn deposes and says:

That deponent is not a party to the action, is over the age of 18 years, and resides in Northport, NY.

That on the 13th day of November, 2019 deponent served a Verified Answer upon the following:

TO: MERSON LAW, PLLC
Attorneys for Plaintiff
150 East 58th Street, 34th Floor
New York, New York 10155

JONES DAY
250 Vesey Street
New York, New York 10281

BARKET EPSTEIN KEARON
ALDEA & LoTURCO, LLP
666 Old Country Road, 7th Floor
Garden City, New York 11530

at the address designated by said attorney (s) for that purpose via depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


THERESA McCAULEY

Sworn to before me this
13th day of November, 2019


Notary Public

BRIAN R. DAVEY
Notary Public, State of New York
No. 02DA4943484
Qualified in Suffolk County
Commission Expires October 24, 20 22

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TIMOTHY POWERS,

Plaintiff, Docket No.: 19-cv-4738

-against-

ROMAN CATHOLIC DIOCESE OF ROCKVILLE
CENTRE, ST. MARTIN OF TOURS CHURCH
and ROBERT GUGLIEMONE,

Defendants.

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VERIFIED ANSWER

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MULHOLLAND MINION DAVEY McNIFF & BEYRER

Attorneys & Counselors at Law
374 Hillside Avenue
Williston Park, New York 11596
(516)248-1200
(516) 248-1225/fax

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To

Attorney for

=====

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for
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